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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,640	03/16/2004	James F. Conway	ACIP 8890US	4917
1688 7590 01/13/2009 POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615				
EXAMINER				
LE, TAN				
ART UNIT		PAPER NUMBER		
3632				
MAIL DATE		DELIVERY MODE		
01/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/802,640

Applicant(s)

CONWAY, JAMES F.

Examiner

Tan Le

Art Unit

3632

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 3, 5 and 7-24 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 is/are allowed.
- 6) ☒ Claim(s) 2-3, 5, 7-8, 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This is the four office action responding to Applicant's amendment filed 11/06/08. Claims 2-3, 5, 7-8, 9-15 and 16-24 are pending. Claims 1, 4 and 6 was previously canceled. Claims 9-15 was previously withdrawn. And claims 22-24 have been added.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3, 5, 7-8, 21, 16-20 and 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 16 and 21 are rejected because there is inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claim unclear. For example, Claim 16 recites **the channel receiving at least a portion of the display**...whereas the display includes at least one advertising panel associated with it, the display comprising three rod arranged to define an opening... and the panel being generally positioned within the opening defined by the rods of the display; and claim 21 recites **"the clip positioning the panel along the opening defined by the plurality of members**, which is unclear as if the display and panel (in claim 16 and 21) intended to be part of the claims or as if the

claims are intending to merely claim the clip. **Clarification and corrections are required.**

The examiner will assume that the display and panel are not positive parts of the claims; only the clip is positively recited for examination purposes.

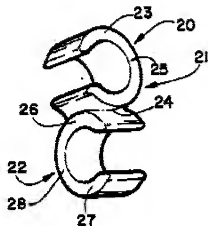
Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16-21, 22-23, 2-3, 5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,371,991 to Bechtel et al.

As to claims 16, 20, 21 and 5, Bechtel et al teaches a re-bar clamp/clip assembly 20 (Fig. 2) comprising all the limitations as claimed, which clearly shows on the attached Figure 2, comprising a pair of first arms 21 and a pair of second arms (22), each pair of arms defining an elongated open mouth channel wherein the open mouth channel receives at least a portion of the display (receives steel bar 13) (Fig. 1). Fig. 1 of Bechtel also shows a plurality of members arranged to define at least one opening.

As to claim 7, the material of the clip, Bechtel et al also discussed on col. 2, line 68 and col. 3, lines 1-4) as being made out of plastic.



As to claims 2-3 and 17-19, Bechtel et al. device also shows a flared outwardly at the ends of each of pair of arms (see Fig. 2 for clarity).

As to claims 8, 18, Bechtel teaches all the features as claimed as discussed above except for the first pair of opposing arms spaced apart from each other a first distance and the second pair of opposing arms spaced apart from each other a second distance wherein the first distance is greater than the second distance. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the first distance dimension size is greater than the second distance dimension size because Applicant has not disclosed that having the first distance dimension size greater than the second distance provides an

advantage or solves any stated problem or is for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the teaching of any distance dimension of the reference because they both perform the same function. Therefore, it would have been obvious matter of design choice to modify the reference of Bechtel to obtain the invention as specified in the claims. Further, it would have been an obvious matter of design choice to make the first distance dimension being greater than the second distance dimension, since such a modification would have involved a mere change in the size/dimension of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In *Re Rose*, 105 USPQ 237 (CCPA 1955).

As to claims 22-23, claims 22-23 also read on Bechtel since the display and panels are not positive recited or part of the claims.

Allowable Subject Matter

3. Claim 24 is allowed.
4. The following is a statement of reasons for the indication of allowable subject matter: Bechtel teaches a clip/clamp assembly that formed of two vertical stacked C-shaped clamps for use in forming concrete footings that require the reinforcing steel rods to be spaced upwardly at a predetermined height above the ground. When the re-bars are snapped into the clamp assembly they will be oriented at 90 degrees away from each other. Applicant's clamp/clip associated with the merchandise display which includes at least one advertising panel and structural members defining an opening and

the display panel being associated with the opening, the advertise panel being generally positioned along the opening defined by the structural members of the display.

Applicant's clip can also be easily released, removed or positioned from the post or along the panel in a display device. Thus to have the clip removed from the steel rods which appear to be destroyed the Bechtel's invention once the concrete is poured into the ground. Further there is no motivation or suggestion of Bechtel that allows the display and panel to be position along the opening defined by the structural members of the display.

Response to Arguments

Applicant's arguments filed 11/06/08 along with the amendment of claims 16 and 21. However, these claims are still rejected for the reasons as set forth in the above action. Accordingly, this action is made -FINAL

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen J. Shriver can be reached on (571) 272-6689. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy J. Sterling/
Primary Examiner, Art Unit 3632
1/12/09

/T. L./
Examiner, Art Unit 3632